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09/807,290	07/16/2001	Reinhard Evers	WK-188	5951

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SUITE 370  
ALEXANDRIA, VA 22314

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/807,290

Applicant(s)

EVERS ET AL.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment (paper no. 16) dated 7-21-03 and this action is final.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-7 and 11 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S.

Patent No. 6,059,648 to Kodama et al.

Referring to claims 1 and 11, Kodama et al. discloses a device for removing the fillets from the eviscerated carcasses of poultry whose extremities have been detached, including at least one measuring device – see figures 10a-10b for measuring the individual dimensions of the carcass, at least one control unit – the control unit is inherent in that the device is electrically powered and automatically powered and driven, and at least one scraping device – at 71, and

means connecting the measuring device via the control unit to the at least one scraping device – at 71 for the purpose of communicating, wherein the measuring device is designed for detection of body joint points, and a or each scraping device includes a disc-like scraping element – see for example figures 1-13b.

Referring to claim 2, Kodama et al. discloses two scraping device – at 71 are provided.

Referring to claim 3, Kodama et al. discloses the at least one scraping device comprises at least two disc-like scraping elements – at 71.

Referring to claim 4, Kodama et al. discloses the at least one scraping element – at 71 is of rotatable construction.

Referring to claim 5, Kodama et al. discloses the at least one scraping device includes an element for pulling back the tender sinew of the carcass– see for example figures 14-15 and column 23.

Referring to claim 6, Kodama et al. discloses the disc-like scraping elements are of pivotable construction such that the circumferential surfaces of the discs are arranged so that they can be rolled over the wishbone from the body joint of the poultry carcass – see for example figures 13a-13b.

Referring to claim 7, Kodama et al. discloses in front of the at least one scraping device in the direction of conveying is arranged at least one measuring device – see for example figures 1-2.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,962,568 to Rudy et al. in view of U.S. Patent No. 5,372,539 to Kunig et al. or GB Patent No. 2129278 to Meyn.

Referring to claim 1, Rudy et al. discloses a device for removing the fillets from the eviscerated carcasses of poultry whose extremities have been detached, including at least one measuring device – see column 4 for measuring the individual dimensions of the carcass, at least one control unit – at 96, and at least one scraping device – at 138-146, and means connecting the measuring device via the control unit to the at least one scraping device for the purpose of communicating, wherein the measuring device is designed for detection of body joint points, and a or each scraping device includes a scraping element – see for example figures 1-7. Rudy et al. does not disclose the scraping element is disc shaped. Meyn and Kunig et al. do disclose the scraping device – 27 of Meyn and – 46,49 of Kunig et al., is constructed as a disc-like scraping element. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Rudy et al. and add the disc-like scraping elements of Meyn or Kunig et al., so as to make the scraping element more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

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Referring to claim 2, Rudy et al. as modified by Meyn or Kunig et al. further discloses two scraping devices – 27 of Meyn; and – 46,49 of Kunig et al. are provided. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Rudy et al. and add the two scraping devices of Meyn or Kunig et al., so as to allow for quicker and more accurate scraping of the meat from the bone of the carcass.

Referring to claim 3, Rudy et al. as modified by Meyn or Kunig et al. further discloses the or each scraping device comprises at least two disc-like scraping elements – 27 of Meyn and – 46,49 of Kunig et al. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Rudy et al. as modified by Meyn or Kunig et al. and further add the two disc-like scraping elements of Meyn or Kunig et al., so as to make the scraping element more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

Referring to claim 4, Rudy et al. as modified by Meyn or Kunig et al. further discloses the or each scraping element – 27 of Meyn – 46,49 of Kunig et al. is of rotatable construction. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Rudy et al. as modified by Meyn or Kunig et al. and further add the scraper elements being rotatable of Meyn or Kunig et al., so as to make the scraping element more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

Referring to claim 6, Rudy et al. as modified by Meyn or Kunig et al. further discloses the disc-like scraping elements are of pivotable construction such that the circumferential surfaces of their discs are arranged so that they can be rolled over the wishbone from the body joint of the poultry carcass – see for example figures 1-4 of Meyn and figures 1-3 of Kunig et al. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Rudy et al. as modified by Meyn or Kunig et al. and further add the scraping elements rolling over the wishbone from the body joint of Meyn or Kunig et al., so as to ensure that the carcass is scraped over its entire surface running along the breast to ensure proper removal of the breast fillets.

Referring to claim 7, Rudy et al. as modified by Meyn or Kunig et al. further discloses that in front of each scraping device in the direction of conveying is arranged at least one measuring device – see for example figures 1-4 of Rudy et al.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rudy et al. as modified by Meyn or Kunig et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,059,648 to Kodama or U.S. Patent No. 5,314,374 to Koch et al. Kodama and Koch et al. disclose at least one scraping device – 71 of Kodama et al. and – 28 of Koch et al. includes an element for pulling back the tender sinew – see for example figures 14-15 of Kodama and figure 4 of Koch et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Rudy et al. as modified by Meyn or Kunig et al. and add the scraping device including an element for pulling back the tender sinew of Kodama or Koch, so as to allow for tender sinew to be easily and accurately removed automatically by the device.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,021,024 to Villemin et al. in view of Meyn.

Referring to claim 11, Villemin et al. discloses a method for removing the fillets from the eviscerated carcasses of poultry whose extremities have been detached including the steps of introducing into the device for removing fillets, detection of the individual carcass dimensions by recording carcass-specific data – see for example figure 3, control of the or each scraping device and mounting of scraping elements on previously determined body joint points – see for example figure 3, subsequent detachment of the fillets from the skeleton by the scraping elements, and final and complete detachment of the fillets by subsequent scraping tools – H and J – see for example figure 1, and means for connecting the measuring device via the control unit to the at least one scraping device for the purpose of communicating poultry carcass measuring data to the scraping devices and wherein the measuring device is designed for detection of body joint points – see for example figure 3 and column 4 lines 36-68 and column 5 lines 1-13. Villemin et al. does not disclose the scraping elements are disc-like. Meyn does disclose the scraping elements – 27 are disc-like – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the method for removing fillets of Villemin et al. and add the disc-like scraping elements of Meyn, so as to make the scraping elements more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.



Referring to claim 12, Villemin et al. as modified by Meyn further discloses the detection of the carcass dimensions is effected by mechanical sensing of the body joint points – se for example figure 3 and columns 4-5 of Villemin et al.

Referring to claim 13, Villemin et al. as modified by Meyn further discloses the two sides of the poultry carcass are processed one after the other – see for example figure 3 and columns 4-5 of Villemin et al.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama as applied to claim 11 above, and further in view of Villemin.

Referring to claim 12, Villemin et al. discloses the detection of the carcass dimensions is effected by mechanical sensing of the body joint points – se for example figure 3 and columns 4-5. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama and add the mechanical sensing of Villemin, so as to make the allow for direct contact of the carcass to determine the position and dimensions of the carcass thus making the measuring more accurate.

Referring to claim 13, Villemin et al. discloses the two sides of the poultry carcass are processed one after the other – see for example figure 3 and columns 4-5. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama and add the two sides of the poultry carcass processed one after the other of Villemin et al., so as to effect accurate removal of the fillets from the carcass.

***Response to Arguments***

4. Regarding claims 1 and 11, in response to applicant's arguments, the recitation of the carcass being detached from the extremities has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Further, the carcass is detached from extremities being the feet of the poultry carcass as seen in figure 2 of the Kodama et al. reference.

Further, the claim language does not state from what the extremities are detached from, but only states that the extremities of the carcass are simply detached. As seen in figure 2 of Kodama et al. the extremities being the feet are detached from the main body of the carcass and the extremities being the wings are detached from other parts of the carcass being the head/neck and feet. Therefore all extremities are detached from some portion of the carcass and the claim as written does not specify from what the extremities are detached from.

Further, the measuring of the carcass as disclosed by the Kodama et al. reference teaches applicant's claimed invention as seen in paragraph 2 of this office action. Even if the measuring of the carcass of the Kodama et al. reference is different than applicant's disclosed measuring system the Kodama et al. reference still discloses the measuring of the carcass as claimed. The claims state the measuring device is used to measure the dimensions of the carcass. The claims do not state the measuring of the carcass is to find a starting position for loosening the fillets

from the skeleton and therefore these limitations carry no weight in determining the patentability of applicant's claimed invention.

Further, the cutting device of Kodama et al. at item 71 is a scraper. As seen in Merriam-Webster's Collegiate Dictionary 10<sup>th</sup> edition scrape is defined as to remove from a surface by usually repeated strokes of an edged instrument and as seen in column 23 lines 1-34, the cutting elements at 71 of Kodama et al. are used to remove meat from the surface of the carcass via the edged instrument at 71.

Further, the claims do not state that the skeleton is still intact in the carcass during processing and therefore this limitation has no bearing on the patentability of the claims in view of the Rudy et al. reference.

Further, the scraping device at items 138-146 of Rudy et al. does scrape the carcass as seen at item 140 in column 7 lines 30-50.

Further, the cutting element of the Meyn reference is a scraper as seen in reference to the cutting element of the Kodama et al. reference above and the scraping elements at 46,49 of the Kunig et al. reference do scrape the carcass as seen at item 46 in column 6 lines 63-68.

Regarding claim 11, the Villemin reference does disclose cutting the fillets after the wings are removed as seen in figure 1 where the wings are removed in step G and the fillets are completely cut from the carcass at steps H-J. Further, the cutting device of Villemin disclosed in steps H-J is a scraping device. As seen in reference to the Kodama et al. and Meyn references above a cutting implement is a scraping device. Further, the claim does not state that the individual carcass dimensions are detected so that control of a scraping device is a function of

the size of the product to be processed and therefore these limitations have no bearing on the patentability of the claimed invention.


*Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

  
PETER POON  
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